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EXAMINER

SPISICH, MARK

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1744

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/996,707  
Filing Date: November 30, 2001  
Appellant(s): TEW, WILLIAM H.

**MAILED**

JAN 24 2006

**GROUP 1700**

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Duane C. Basch  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 27 May 2005 appealing from the Office action mailed 14 September 2004.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

|           |               |         |
|-----------|---------------|---------|
| 2,012,655 | Bowman        | 8-1935  |
| 2,195,371 | Moore         | 3-1940  |
| 2,534,205 | Newhall et al | 12-1950 |

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|             |                |         |
|-------------|----------------|---------|
| 2,635,267   | Smith          | 4-1953  |
| 2,880,432   | Schnider et al | 4-1959  |
| 3,242,008   | Kurtz          | 3-1966  |
| 3,449,779   | Butterworth    | 6-1969  |
| 3,651,922   | Ross et al     | 3-1972  |
| 5,906,269   | Zabron et al   | 5-1999  |
| 6,309,741   | Boyle          | 10-2001 |
| JP 6-246841 | SATOLEN KK     | 9-1994  |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification (page 9, lines 17-27) states that the purpose of the vinyl layer (810) is to provide abrasion resistance. There does not appear to be support for the recitation that it reduces the absorption of moisture by the foam padding as is now recited in claim 7.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USP 2,635,267) in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Smith discloses a produce handling machine comprising a stationary produce-contacting surface (13) on which is attached foam (sponge rubber; column 2, lines 43-45) padding (14a) to reduce bruising of the produce. The patent to Smith discloses the invention substantially as claimed with the exception of the foam including an anti-microbial agent. The patent to Zabron teaches that it is well known to add an antimicrobial agent to an article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into any surface of a machine that directly contacts the food article to inhibit bacterial growth. The manner of forming the foam material (claim 19) fails to define over the pad (14a) of Smith. '841 also discloses a foam padding with a myriad of uses and which further includes an anti-microbial agent incorporated therein (see attached Derwent abstract). It would have been obvious to one of ordinary skill to have incorporated such an agent into the foam pad (14a) of Smith to make it more sanitary. **With regard to the addition of the term "vegetative"**, expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666,667 (Bd. App. 1969). Furthermore, the inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims. *In*

*re Young*, 75 F.2d, 25 USPQ 69 (CCPA 1935). See MPEP 2115. The comment applies to each of the rejections below and for brevity will not be repeated.

Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnider et al (USP 2,880,432) in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Schnider discloses a produce handling machine including a stationary produce contacting surface (62) and which further includes a foam (sponge rubber as per column 2, line 41) padding (63) covering at least a portion of the surface to prevent damage to the produce. The patent to Schnider discloses the invention substantially as claimed with the exception of the foam including an anti-microbial agent. The patent to Zabron teaches that it is well known to add an anti-microbial agent to an article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into any surface of a machine that directly contacts the food article to inhibit bacterial growth. The manner of forming the foam material (claim 19) fails to define over the pad (63) of Schnider. It would also have been obvious to incorporate such an agent into the foam of Schnider as taught by '841 for the reason stated above.

Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al (USP 3,651,922) in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Ross discloses a produce handling machine including numerous food contacting surfaces (any one of the conveyor rollers 78 or the **stationary** surfaces 114 and 118 in fig 5 (see column 6, lines 1-7) which cross-hatching is that of foam as

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well as being the same as the rollers (84), which are disclosed as being a foam. The patent to Ross discloses the invention substantially as claimed with the exception of the anti-microbial agent. The patent to Zabron teaches that it is well known to add an antimicrobial agent to an article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into any of the food contacting surfaces (including the stationary padded surfaces at 114 and 118) to inhibit bacterial growth. The foam padding material of Ross is preferably closed cell (column 3, lines 4-13) (claim 16) and includes a continuous yet flexible outer layer (89) (column 4, lines 55-60) (claim 17) of plastic or other suitable wear resistant material. The use of vinyl (claim 18) for this material would be an obvious choice of design. The manner of forming the foam padding (claim 19) fails to define over the structure of Ross. It would also have been obvious to incorporate into the foam pad of Ross an agent as in '841 for the reason stated above.

Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle (USP 6,309,741) in view of JP 6-246841. The patent to Boyle discloses a stationary produce-contacting surface (states that the inventive pad is for placement in a shopping cart) and further including a foam padding covering (column 2, line 24 thru column 4, line 20) at least a portion of said surface to reduce bruising (column 1, lines 31-38). The patent to Boyle discloses the invention substantially as claimed with the exception the anti-microbial agent. '841 discloses the incorporation of an anti-bacterial agent (see attached Derwent abstract) into a foam material having uses in many

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different environments (including both as a padding for a chair and also in a refrigerator). It would have been obvious to one of ordinary skill to have modified the pad of Boyle as such in order to render the pad more sanitary. The preamble recitation of "produce handling machine" fails to define any particular structure. A preamble is denied the effect of a limitation wherein the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). To the extent that the claim defines a « machine, the shopping cart of Boyle would meet this recitation in its broadest sense. The foam of Boyle is preferably closed-cell (column 2, line 26) (claim 16) and is further provided with a flexible outer layer (column 1, lines 52-55) (claim 17). The use of vinyl for this layer (claim 18) would be an obvious choice of design and the pad of Boyle is further molded (column 2, lines 51-52) (claim 19).

Claims 1,6-11,22,24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (USP 2,195,371) in view of Ross et al (USP 3,651,922) and further in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Moore discloses produce handling machine comprising a receiver (15,10) a produce washer (essentially the "soaking", "impeller" and "rinse" tanks of fig 1), and a dryer unit (see fig 1a) of the absorbing type. The patent to Moore also discloses numerous fixed and moving surfaces that contact the produce being cleaned. The patent to Ross a plurality of conveyor rollers (78) comprised of closed-cell foam (84) (column 3, lines 4-12) and further discloses **padding (118) for the stationary surfaces** (114,116) and the



cross-hatching is that of foam (and it is also the same as the portion of the rollers that is foam). It would have been obvious to one of ordinary skill to have provided such padding to any of the fixed surfaces of the machine of Moore to prevent bruising or other damage to the produce. The patent to Ross; however, does not disclose the inclusion of an antibacterial agent in the foam padding. The patent to Zabron discloses a produce handling conveyor which states (abstract, lines 13-16) "if the belting is intended to be used to convey food grade products, preferably an antibacterial agent is incorporated into the elastomeric material to inhibit bacterial growth". The patent to Zabron teaches that one of ordinary skill would incorporate such an agent into any food contacting surface or material (moving or stationary) in a handling machine so as to inhibit bacterial growth. '841 discloses the inclusion of an antimicrobial agent into a foam material. It would also have been obvious to one of ordinary skill to have modified the padding of Ross in view of '841 for the same reason stated above. The patent to Ross teaches that the padding material would preferably be closed-cell (claim 6). The patent to Ross further discloses a closed-cell padding material (84) which is covered by flexible plastic layer (column 4, lines 54-56) (claim 7). The use of vinyl for this purpose would be an obvious choice of design. The patent to Moore discloses an inspection conveyor (31) including a plurality of parallel rolls (32) (claim 9). The patent to Ross again teaches the use of a foam covering for the conveyor rolls. The patent to Moore also discloses the "sizer" (claim 10) with a drop surface (89). The "packing table" could be the chute (95) (claim 11). The patent to Ross discloses the benefit of padding both movable as well as stationary surfaces of produce handling machine and as such any

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surfaces of Moore could be suitably padded in order to reduce damage to the produce. Once there is a teaching of the incorporation of an anti-microbial into a food handling surface/material, one would deem it obvious to provide such an agent to any surface of a machine which directly contacted the produce. In fact, it would not make sense to provide it to just one surface thereof. The particular anti-microbial agents of claims 22 and 24 are well known anti-microbial materials (especially silver-based materials). The particular thickness of the padding (118) taught by Ross would be an obvious design choice to one of ordinary skill. The sole purpose for it being there in the first place is to cushion to the food articles and the thicker the better.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kurtz (USP 3,242,008). The patent to Moore fails to disclose the recited drape, although the provision of such at the exit of a produce washer is well known (see #24 in Kurtz; USP 3,242,008). It would have been obvious to one of ordinary skill to have provided such a drape at the exit of the washer of Moore to contain the fluid therein. The further inclusion of the antimicrobial into this element would be obvious as set forth above.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Bowman (USP 2,012,655). The patent to Bowman discloses produce washer including rubber scrubbing members (5) (page 2, column 1, lines 1-5). The further inclusion of the antimicrobial into this element would be obvious as set forth above.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Butterworth (USP 3,449,779).

The patent to Moore disclose the invention substantially as claimed with the exception of the washer including bristled-brushes. The patent to Butterworth discloses a produce washer with nylon bristles (column 3, lines 44-46). The further inclusion of the antimicrobial into this material would be obvious as set forth above. In fact, DUPONT makes a well-known nylon bristles material (under trademark TYNEX) which including an antibacterial agent therein.

Claims 2-5, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Newhall et al (USP 2,534,205). The patent to Moore discloses the invention substantially as claimed with the exception of the particular structure of the "water absorber", although it does disclose a dryer which operates on the same general principle. The patent to Newhall discloses a produce dryer including open cell foam roller (14) as well as wringers (18). It would have been obvious to one of ordinary skill to have substituted any known produce dryer for that of Moore. The further inclusion of the antimicrobial agent into the material of the absorbent rollers (14) would be obvious for the stated reason above.

#### **(10) Response to Argument**

Appellant's arguments will be addressed in the order they appear in the brief.

First Question: The first issue pertains to the rejection based on 112-1st paragraph. Appellant had added (in an amendment filed 26 July 2004) to claim 7 the phrase "to reduce absorption of moisture by the foam padding" (claim 7, lines 3-4). The

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noted portions of the specification have been reviewed and deemed to be non-persuasive. Firstly, page 1 (lines 15-27) pertains to the deficiencies of the prior art (prior foam pads having the tendency to abrade over time and form crevices that are prone to the growth of bacteria and fungi). The noted text of page 1 has nothing to do with the purpose of the vinyl layer. Secondly, page 9 (lines 17-27) does describe that it may be advantageous to provide a flexible outer vinyl layer (810) over the foam "that will withstand greater amounts of abrasion than the foam layer" (page 9, line 21). Nowhere is there any indication that the provision of the vinyl layer is to "reduce absorption of moisture by the foam padding".

Before addressing the arguments pertaining to the prior art, the examiner would like to comment on the prior addition of the term "vegetative" to each of the independent claims (1 and 15). All of the pending claims are drawn to a "machine" for processing produce. Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In re Young, 75 F.2d 996, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). This applies to every instance in the argument pertaining to the article(s) worked on by the machine and for sake of brevity is only addressed here.

Second Question: The patent to Smith (USP 2,635,267) discloses a produce handling machine comprising a stationary produce contacting surface (13) on which is

attached foam (sponge rubber; column 2, lines 43-45) padding (14a) to reduce bruising of the produce. The patent to Smith fails to disclose the anti-microbial agent. The patent to Zabron (USP 5,906,269) teaches that it is well known to add an antimicrobial agent to an article or material if it is intended to contact food grade produce (column 6, line 44 thru column 7, line 10). In addition, the patent to Zabron discloses that the element in which the antimicrobial is incorporated in an elastomeric polymer which also helps prevent damaging the articles being handled thereby (column 6, lines 23-24). Zabron is only relied on to show that surfaces that come in contact with food may desirably have an anti-microbial incorporated therein. **One would recognize that the benefit of incorporating the anti-microbial into the food contacting surface would also apply to stationary surfaces.** It would thus have been obvious to one of ordinary skill to have incorporated an anti-microbial into portions of the device of Smith (including the stationary foam padding 14a) to inhibit bacterial growth. The manner of forming the foam material (claim 19) fails to define over the pad (14a) of Smith. Recitations as to the manner of forming an article are not germane to the issue of patentability of the article itself when the claim is drawn to the article and not the method of forming. JP 6-246841 (hereinafter '841) also discloses a foam padding with a myriad of uses and which further includes an anti-microbial agent incorporated therein. '841 does lack the disclosure as in Zabron that the foam is intended to contact food articles. It does, however, disclose the desirability of incorporating into a foam an antibacterial agent for inhibiting the growth of bacteria in surfaces that are recognized as being at risk thereof. The particular teachings of Zabron et al and JP 6-246841 as described above will not be

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further repeated for the sake of brevity, especially in view of the fact that the logic behind the rejection(s) as well as the particular arguments presented by appellant are generally the same.

Third Question: The patent to Schnider et al (USP 2,880,432) discloses a produce handling machine including a stationary produce contacting surface (62) and which further includes a foam (sponge rubber as per column 2, line 41) padding (63) covering at least a portion of the surface to prevent damage to the produce. The patent to Schnider discloses the invention as claimed with the exception of the foam including an anti-microbial. It would have been obvious to one of ordinary skill to have incorporated such an agent into any surface of the machine that directly contacts the food article to inhibit bacterial growth based on the disclosures of Zabron et al and JP 6-246841 described in detail above.

Fourth Question: The patent to Ross et al (USP 3,651,922) discloses a produce handling machine including numerous food contacting surfaces (any one of the conveyor rollers 78 or the **stationary** surfaces 114 and 118 in figure 5; see column 6, lines 1-7) which cross-hatching is that of foam as well as being the same as the rollers (84), which are disclosed as being a foam. With regard to the cross-hatching in Ross, the similarities in the cross-hatching with the rollers (84) (and the description of the foam material for the rollers 84; column 3, lines 4-12) and the description of the materials (114,118) as padding would reasonably lead one of ordinary skill to assume that they are of a foam. The patent to Ross discloses the invention substantially as claimed with the exception of the anti-microbial agent. It would have been obvious to one ordinary

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skill to have incorporated such an agent into any of the food contacting surfaces (including the stationary padded surfaces at 114 and 118) to inhibit bacterial growth based on the disclosures of Zabron et al and JP 246841 described in detail above. The foam padding material of Ross is preferably closed cell (column 3, lines 4-13) (claim 16) and includes a continuous yet flexible outer layer (89) (column 4, lines 55-60) (claim 17) of plastic or other suitable wear resistant material. The use of vinyl (claim 18) for this material would be an obvious design choice. The manner of forming the foam padding (claim 19) fails to define over the structure of Ross.

Fifth Question: The patent to Boyle (USP 6,309,741) discloses a stationary produce-contacting surface (states that the inventive pad is for placement in a shopping cart) and further including a foam padding covering (column 2, lines 24 thru column 4, line 20) at least a portion of said surface to reduce bruising (column 1, lines 31-38). The patent to Boyle discloses the invention substantially as claimed with the exception of the anti-microbial agent. '841 discloses the incorporation of an anti-bacterial agent into a foam material having uses in many different environments (including both as a padding for a chair which would be similar to the pad of Boyle as well as in a refrigerator). It would have been obvious to one of ordinary skill to have modified the pad of Boyle as such in order to render the pad more sanitary. Appellant points to column 2 (lines 51-56) as teaching away from the addition of an anti-microbial agent. It does teach that it is desirable to keep the foam pad therein as clean and free from bacteria as possible. It would be desirable to include the anti-microbial into the foam if, for instance, the protective cover ever became pierced or scratched or to better resistive to bacteria over

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extended periods. Appellant seems to take the position that the mere provision of the protective layer on the foam teaches away from including the agent in the foam. It is pointed out that appellant does essentially the same thing in the provision of the vinyl layer. With regard to the recitation of "produce handling machine", the body of the claim (#15) fails to breathe life and meaning into the term "handling machine" in that the only structure recited is a stationary surface and no handling structure or means is positively set forth therein. In addition, a shopping cart with the foam pad of Boyle therein would constitute a produce handling machine to the extent required by the claim(s).

Sixth Question: Claim 1, as opposed to claim 15, is drawn to a produce handling machine including a plurality of stations including at least a receiver, washer and a water absorber (dryer) and further reciting the at least one stationary surface including the foam padding with the anti-microbial agent therein. This last part being similar to claim 15. The provision of a machine for handling and treating produce and which includes a plurality of different stations is known in the art. The patent to Moore (USP 2,195,371) is cited to show the basic arrangement of claim 1. The patent to Moore discloses a produce handling machine comprising a receiver (15,10), a produce washer (essentially the "soaking", "impeller" and "rinse" tanks of fig 1), and a dryer unit (see fig 1a) of the absorbing type and Moore also discloses numerous fixed and moving surfaces that contact the produce being cleaned. The patent to Ross discloses a plurality of conveyor rollers (78) comprising of closed-cell foam (84) (column 3, lines 4-12) and further discloses padding (118) for the stationary surfaces (114,116) and the



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cross-hatching is that of foam (and it is also the same as the portion of the rollers that is described as being foam). Also, the art clearly teaches that the use of a foam padding on surfaces of a handling machine is well known and that even (for argument sake) if the padding (114,116) of Ross was not foam that it would be obvious to use such a material anyway. It would have been obvious to one of ordinary skill to have provided such padding to any of the fixed surfaces of the machine of Moore to prevent bruising or other damage to the produce. The patent to Ross, however, does not disclose the inclusion of an anti-bacterial agent in the (foam) padding. This step of providing such an agent into such a padding is would be obvious to one of ordinary skill in view of Zabron et al or JP 6-246841 as described above. Firstly, the provision of a padding somewhere in a produce handling machine for the purpose of preventing bruising or otherwise damaging the produce is very well known in the art and is disclosed in Ross et al as well as numerous other patents of record as well as the admitted prior art described on page 1 of the present specification. Claim 1 and its dependent claims are drawn to a cleaning machine with a number of different stations. The provision of a series of such stations which sequentially treat an article (in this case produce) is known in the art. In addition, many of the particulars of, for example, the dryer and the cleaner/washer are also known. The examiner has taken the position that one would, for example, recognize that a given produce washer in a system as in Moore could be interchanged with any other washer recognized by the art as being its functional equivalent. The patent to Ross teaches that the padding would preferably be a closed cell (claim 6). With regard to claims 7 and 8, the patent to Ross discloses the provision

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of a wear layer (89) over the foam material (84). With regard to claim 9, the patent to Ross discloses an inspection conveyor (31) including a plurality of parallel rolls (32) and Ross teaches the use of a foam covering for the conveyor rolls. Once it is established in the art to provide an anti-bacterial agent into a food contacting surface (taught especially by Zabron), it would suggest to one of ordinary skill to include such a material in any food contacting surface of a machine that would be at risk to being contaminated with bacteria. The prior art of record, including the patent to Ross, clearly teaches the provision of a padding material on surfaces of a produce handler which come in contact with the food product. As the patent to Moore discloses a discharge chute, the provision of a pad thereon would be an obvious modification to one of ordinary skill for the reason(s) clearly stated by the prior art of record. Assuming that the basic combination of the prior art is proper, the mere further recitation of additional anti-microbial agents would be obvious to one of ordinary skill. With regard to claims such as claim 26, appellant has merely further defined a minimum thickness. Obviously, the prior art padding layers have "a thickness" and .125 inches (1/8 inch) is relatively thin and that the claim only states that it is at least that thick. What does appellant assert the thickness of the prior art pad (in this case in Ross) is? Appellant, at least with regard to claims like claim 26, must provide a convincing argument that the prior art is different than the claim in addition to why it is a non-obvious modification thereof.

Seventh Question: The patent to Kurtz discloses a particular drying apparatus including a drape (24). As the patent to Moore discloses a system with a drying unit, the use of an equivalent structure would be obvious to one of ordinary skill. The

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dependent claims keep reciting different stations or particulars of, for example, the dryer and the washer. Once it is established in the art of including an anti-microbial agent into a food contacting surface, it would be obvious to one of ordinary skill to include such an agent into any portion of a handling machine which contacts the produce. This would include, for example, the drape (24) of Kurtz.

Eighth Question: The patent to Moore discloses a washer and the patent to Bowman further teaches a washer which utilizes brushes. The substitution of an art-recognized equivalent produce washer in the system of Moore would be obvious to one of ordinary skill in the art. Assuming that the Board determines that it would be obvious (in view of either Zabron or JP '841) to provide an anti-microbial agent to any surface of the produce handling machine which would in use contact the food article, then the mere further laundry list of things which include the agent would be a further obvious modification. Assuming that the board determines that the prior art reasonably suggests that it would be obvious to one of ordinary skill to include an anti-microbial agent into any particular surface of a produce handling machine, the further recitation of a laundry list of elements which also include the agent would be obvious to one of ordinary skill. In fact, the provision of such as agent to one portion of the machine while not treating other portions of the machine equally susceptible to being contaminated with bacteria would defeat the purpose of providing it in the first place.

Ninth Question: The device of Butterworth uses brushes to scraper foreign matter from an egg shell and the substitution of such a cleaner would be obvious to one of ordinary skill for much the same reason(s) as stated previously. Butterworth further

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discloses that the bristles are of nylon (column 3, lines 44-46). The further inclusion of the anti-microbial into this material would be obvious for the prior stated reason(s). In fact, DUPONT makes a well-known nylon bristle material (under the trade name TYNEX) which includes an antibacterial agent thereof and the use of such a well known (nylon) bristle material would be obvious to one of ordinary skill.

Tenth Question: The patent to Moore discloses a drying station and the patent to Newhall et al discloses a dryer of the type recited in claim 2. The inclusion of the anti-microbial agent into the foam (14) rollers of the dryer of Newhall would obvious for the reason(s) stated above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mark Spisich



Conferees:

Robert Warden

Roy King

APPEAL CONFEEE: 

  
ROY KING  
SUPERVISORY PATENT EXAMINER  
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